

1 IN THE UNITED STATES DISTRICT COURT

2 IN AND FOR THE DISTRICT OF DELAWARE

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4 INTERNATIONAL BUSINESS MACHINES : CIVIL ACTION
CORPORATION,

5 Plaintiff, :
v :
6 :
7 Groupon, Inc., : :
8 Defendant. : NO. 16-122-LPS

9 Wilmington, Delaware
10 Friday, July 27, 2018
11 Jury Trial - Volume J

12 - - -

13 BEFORE: HONORABLE LEONARD P. STARK, Chief Judge, and a jury

14 APPEARANCES: - - -

15 POTTER ANDERSON & CORROON, LLP
16 BY: DAVID E. MOORE, ESQ.,
17 BINDU A. PALAPURA, ESQ., and
18 STEPHANIE E. O'BYRNE, ESQ.

19 and

20 DESMARAIS, LLP
21 BY: JOHN DESMARAIS, ESQ.,
22 KARIM Z. OUSSAYEF, ESQ.,
LAURIE STEMPLER, ESQ.,
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MICHAEL MATULEWICZ-CROWLEY, ESQ.
ROBERT C. HARRITS, ESQ.,
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EDWARD GEIST, ESQ.
(New York, New York)

23 Counsel for Plaintiff

24
25 Brian P. Gaffigan
Registered Merit Reporter

1 APPEARANCES: (Continued)

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3 **ASHBY & GEDDES, P.A.**
4 **BY: JOHN G. DAY, ESQ., and**
5 **ANDREW C. MAYO, ESQ.**

6 and

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8 **FENWICK & WEST, LLP**
9 **BY: J. DAVID HADDEN, ESQ.,**
10 **SAINA M. SHAMILOV, ESQ.**
11 **PHILLIP J. HAACK, ESQ.**
12 **SAPNA MEHTA, ESQ.**
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Counsel for Defendants

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PROCEEDINGS

(REPORTER'S NOTE: The following jury trial was
held in open court, beginning at 1:36 p.m.)

1 THE COURT: Good afternoon, everybody.

2 (The attorneys respond, "Good afternoon, Your
3 Honor.")

4 THE COURT: You have been advised I believe we
5 have a verdict. Any issues before I bring them in?

6 MR. DESMARAIS: No, Your Honor.

7 MR. HADDEN: No, Your Honor.

8 THE COURT: Okay. We'll bring the jury in.

9 (Jury returned.)

10 THE COURT: Good afternoon, ladies and gentlemen
11 of the jury. Nice to see you all again. I've been advised
12 you have a verdict, Madam Foreperson; is that correct?

13 THE FOREPERSON: That is correct.

14 THE COURT: Could you please hand it to
15 Ms. Ghione for me.

16 Give me a moment while I review the verdict.

17 (The Court and the Law Clerk review verdict.)

18 THE COURT: Ms. Ghione will now read the
19 verdict.

20 THE DEPUTY CLERK: Question 1: Did IBM prove by
21 a preponderance of the evidence that Groupon infringed the
22 following claims of the asserted patents?

23 '967 patent.

24 Claim 1: Yes.

25 Claim 2: Yes.

1 '849 patent.

2 || **Claim 1: Yes.**

3 || **Claim 8: Yes.**

4 '601 patent.

5 || Claim 51: Yes.

6 || Claim 54: Yes.

7 '346 patent.

8 || Claim 1: Ye

9 || Claim 5: Yes.

10 Did IBM prove by a preponderance of the evidence
11 that Groupon's infringement was willful?

12 '967 patent: Yes.

13 '849 patent: Yes.

14 '601 patent: Yes.

15 '346 patent: Yes.

16 Did Groupon prove by a preponderance of the

17 evidence that it had an implied license to practice the '346
18 patent via IBM's licenses to Facebook and Google?

19 || No.

Did Groupon prove by a preponderance of the

21 evidence that IBM's rights to assert the '346 patent against
22 Groupon were exhausted via IBM's licenses to Facebook and
23 Google?

24 || NO.

25 Did Groupon prove by clear and convincing

1 evidence that the following claims of the asserted patents
2 were -- are invalid?

3 '601 patent.

4 No -- or claim 51: No.

5 Claim 54: No.

6 '346 patent.

7 Claim 1: No.

8 Claim 5: No.

9 What sum of money, if paid now in cash, do
10 you find IBM has proven by a preponderance of the evidence
11 would fairly and reasonably compensate IBM for Groupon's
12 infringement of IBM's patent or patents?

13 \$82.5 million.

14 Signed and dated this date by the eight jurors.

15 THE COURT: Thank you. Mr. Desmarais, do you
16 wish to have the jury polled?

17 MR. DESMARAIS: No Your Honor.

18 THE COURT: And Mr. Hadden?

19 MR. HADDEN: No, Your Honor.

20 THE COURT: Okay. Thank you.

21 Ladies and gentlemen, your official duties are
22 complete. I want to express here in open court my gratitude
23 as well as the gratitude of the parties for the time you
24 have taken from your busy lives to do the important work
25 that you have done.

1 I do want to have a chance to speak to you
2 individually as well back in the jury room. So we have some
3 papers for you, and I want to at least get a chance to shake
4 both of your hand and thank you personally for your duty.
5 So we'll ask you to wait back in the jury room just for
6 another moment or two while I talk to the lawyers.

7 Thank you very much.

8 (Jury left courtroom.)

9 THE COURT: Have a seat just for a moment.

10 What I typically do is give you a week or so
11 to think about the impact of the verdict and then give me a
12 joint status report with proposals for how we proceed at
13 this point.

14 Oftentimes I find it helpful for you, if not by
15 the end of this initial period, at some time thereafter not
16 too far in the future, if you would identify any post-trial
17 motions that you plan to file and then I can reflect on that
18 and potentially give you my inclinations as to how I might
19 rule on them if those motions are filed, but there is lots
20 of different ways we can proceed.

21 So for now, I'm just going to say I direct you
22 to meet and confer, get me a status report a week from
23 today. If you find in your meeting and conferring that some
24 additional time would be helpful, then let me know that by
25 next Friday.

3 MR. DESMARAIS: No, Your Honor. Thank you.

4 THE COURT: Thank you. And --

5 || MR. HADDEN: No, Your Honor.

6 THE COURT: Thank you all very much. It's been
7 an interesting couple of weeks --

8 MR. DESMARAIS: Yes.

12 || (Proceedings end at 1:42 p.m.)

14 I hereby certify the foregoing is a true and accurate transcript from my stenographic notes in the proceeding.

/s/ Brian P. Gaffigan
Official Court Reporter
U.S. District Court